

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

vs.

E.I. DUPONT DE NEMOURS AND
COMPANY and PIONEER HI-BRED
INTERNATIONAL, INC.,

Defendants.

Case No. 4:09-cv-00686 (ERW)

**MONSANTO'S NOTICE REGARDING THE
MATTERS TO BE ADDRESSED ON JUNE 10, 2010**

Plaintiffs/Counterclaim-Defendants Monsanto Company and Monsanto Technology LLC (collectively "Monsanto") file this notice in response to the Court's Order (D.I. 220) scheduling a hearing on June 10, 2010 at 8:30 AM to address certain pending motions, including Plaintiffs' Motion for Protective Order Relating to Third-Party Document Subpoenas (D.I. 160), Defendants' Motion for Leave to File Second Amended Answer and Counterclaims (D.I. 162), Plaintiffs' Motion for Protective Order Governing Disclosure of Confidential Commercial Information (D.I. 174), Defendants' Motion to Clarify Memorandum and Order (D.I. 192), and Defendants' Motion for an Expedited Pretrial Status Conference (D.I. 212).¹

The parties recently met and conferred regarding the issues raised in Defendants' Motion for an Expedited Pretrial Status Conference (D.I. 212) and Plaintiffs' Motion for Protective Order Governing Disclosure of Confidential Commercial Information (D.I. 174). As set forth

¹ Counsel for Monsanto has a personal conflict that has arisen on June 10th. The parties are conferring with the Court to move the date of the hearing to a mutually convenient date shortly after June 10th.

below, these discussions have resolved some, but not all, of the issues to be considered on June 10, 2010.

I. Monsanto Withdraws Its Motion for Protective Order Governing Disclosure of Confidential Commercial Information.

The parties have reached an agreement regarding the terms of a protective order governing disclosure of confidential commercial information. Accordingly, Monsanto withdraws its motion regarding same (D.I. 174). Defendants have agreed to the number of persons with access to “restricted confidential” information, and Monsanto has agreed to a modified definition of the term proposed by Defendants. Monsanto remains concerned that Defendants will over-designate documents “restricted confidential” and, therefore, reserves its right to seek a modification from the Court in the event there is widespread over-designation.

II. The Parties Have Resolved Most of the Issues Raised in Defendants’ Motion for an Expedited Pretrial Status Conference.

The parties have made substantial progress in their negotiations and have resolved most of the issues raised in Defendants’ Motion for an Expedited Pretrial Status Conference (D.I. 212) (“Defendants’ Motion”).

A. ESI Stipulation

Regarding the parties’ obligations to preserve and produce documents and electronically stored information (“ESI”), the parties have reached agreement on several terms of an ESI Stipulation. The parties have reached agreement on Paragraph 26 of the Proposed Stipulation regarding the production of metadata for documents produced in prior litigations. The parties have also reached agreement on the search terms to be applied to Defendants’ ESI.

The parties have not been able to reach an agreement on two other issues under the proposed ESI Stipulation:

- **Preservation.** Under Paragraphs 1 and 6, the parties were negotiating the temporal scope of preservation and production. Monsanto has agreed to Defendants' latest request that the ESI Stipulation be limited to preservation only, leaving for later resolution the temporal scope of discovery. As for preservation, the parties have reached an agreement on the scope of preservation for the contract and antitrust issues, but there remains a dispute on the scope of patent preservation. Despite repeated proposals by Monsanto, Defendants are insisting that Monsanto preserve all documents relating to glyphosate tolerance research and development back to 1983. Monsanto has proposed reasonable limitations on preservation that are appropriately tailored to the patents and technology at issue in this case.
- **Search Terms to be Applied to Monsanto's ESI.** The parties have made substantial progress on the disputes relating to the Monsanto search terms. Monsanto has made repeated concessions to reduce the disputes. There remain, however, a number of disputed terms involving issues of overbreadth and relevance.

Monsanto would have preferred to resolve these issues without court intervention. However, as set forth in Monsanto's Response to Defendants' Motion for an Expedited Pretrial Status Conference, filed concurrently herewith, the parties will need to address these two outstanding issues during the hearing on June 10, 2010.

B. *Markman* Production Issues

The parties have resolved the alleged deficiencies in Monsanto's May 3, 2010 production of documents in advance of *Markman* claim construction proceedings. Monsanto engaged in

extensive oral and written negotiations with Defendants regarding the *Markman* materials, and made a complete production consistent with the parties' written agreement. In addition, Monsanto recently agreed, as an accommodation, to produce additional documents that are outside the scope of both the parties' original agreement and the Court's order requiring production of *Markman* materials by May 3, 2010.

III. The Remaining Pending Motions Will be Addressed on June 10, 2010.

In addition to the unresolved issues regarding the ESI Stipulation addressed in Monsanto's Response to Defendants' Motion for an Expedited Pretrial Status Conference, there are other pending motions noted in the Court's Order (D.I. 220) that were not the subject of the parties' recent meet and confer and thus will be addressed at the hearing on June 10, 2010. These motions include Plaintiffs' Motion for Protective Order Relating to Third-Party Document Subpoenas (D.I. 160), Defendants' Motion for Leave to File Second Amended Answer and Counterclaims (D.I. 162), and Defendants' Motion to Clarify Memorandum and Order (D.I. 192).

Dated: June 3, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3d day of June, 2010, the foregoing was filed electronically with the Clerk of the Court for the United States District Court Eastern District of Missouri, Eastern Division and served by ECF notice by operation of that Court's electronic filing system upon the following:

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